Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	))	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing an Unified Intercarrier Compensation Regime	))	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109

COMMENTS OF THE
CORPORATION COMMISSION OF THE STATE OF KANSAS
ON NPRM, SECTION VX, ENTITLED
"Reducing Inefficiencies and Waste by Curbing Arbitrage"

Introduction

On February 9, 2011, the Federal Communications Commission (FCC or Commission) released the *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking* (*NPRM*). The *NPRM* sought comments regarding Section XV of the *NPRM* within 30 days after date of publication in the Federal Register.

The Kansas Corporation Commission (KCC) applauds the Commission for recognition of the need to address and act to reduce waste and inefficiencies that presently occur through arbitrage in the telecommunications industry. While the FCC's actions may not immediately eliminate all waste and inefficiencies, the FCC's proposals to address both arbitrage and the classification of Voice over Internet Protocol (VoIP) services are steps in the right direction and will benefit the telecommunications industry and, more importantly, consumers. The KCC appreciates the opportunity to offer these comments.

Kansas Background

Kansas is one of the most rural states in the nation, ranking 42nd in population density based on 2010 census data. On many public policy issues Kansans must address what has been referred to as the "Buffalo Commons," a regional metaphor predicting the emptying (or at least the decline in population) of the High Plains from Canada on the north to New Mexico and Texas in the south, including virtually all of rural Kansas. In 1987, as part of their famous, controversial proposal for a "Buffalo Commons," Drs. Frank and Deborah Popper of Rutgers University showed that hundreds of counties in the American West still have less than a sparse 6 persons per square mile—which was the density standard Frederick Jackson Turner used to declare the American Frontier closed in 1893.[1] Many Kansas counties today have less than 2 persons per square mile!

Generally, the Kansas average population density of 34.9 persons per square mile is much lower than the national average of 87.4 persons per square mile.[2] Kansas has a limited number of major population centers: Kansas City, Wichita, Topeka, Lawrence, Manhattan, and Salina – to name the larger centers, although not all would necessarily be deemed urban in other settings. Its counties range in density from 480-square-mile Johnson County with an estimated density of 1,134 persons per square mile, to 948-square-mile Wallace County, with an estimated

[1] http://www.buffalofieldcampaign.org/habitat/documents2/Popper_and_Popper_The_Buffalo_Commons.pdf

[2] http://2010.census.gov/2010census/data/

1.6 persons per square mile.[3] In fact, except for those counties which are included in the three "urban" telephone exchanges, as defined in Kansas telecommunications statutes, the population density is 18.4 persons per square mile. The urban/rural divide has continued to widen. Almost a quarter of Kansas counties, mostly those with the lowest densities, lost 10% population from 2000 – 2010.[4]

Thirty-nine incumbent local exchange carriers (ILECs) (thirty-seven are classified as rural ILECs for both state and federal purposes) operate in Kansas. Southwestern Bell Telephone Company d/b/a AT&T (AT&T) operates as a price cap carrier in both the state and federal jurisdictions. CenturyLink[5] operates as a rural telephone company in the federal jurisdiction, but, as the second largest Kansas ILEC in Kansas, it operates as a price cap non-rural carrier for state purposes. Fifty-eight competitive local exchange carriers (CLECs) serve Kansas customers, with one providing service in a rural telephone company service area. In addition, 44 carriers offer VoIP services and 29 carriers offer wireless services in Kansas.

Kansas has taken very significant steps to address its own rural support needs, to reduce state access charges to interstate levels and to promote fair competition based on competitively neutral policies. In 1996, the state legislature established the Kansas Universal Service Fund (KUSF) to fund Lifeline, dual party relay service, telecommunications equipment for persons with special needs, as well as to support universal service. [6] While the KUSF initially provided support to carriers to offset reductions in intrastate access charges on a revenue neutral basis, it

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[3] http://www.ipsr.ku.edu/ksdata/ksah/population/2pop23.pdf

[4] http://2010.census.gov/2010census/data/

[5] The United Telephone Companies of Kansas, the United Telephone Companies of Eastern Kansas, The United Telephone Companies of South Central Kansas, and United of Missouri d/b/a CenturyLink are collectively referred to as CenturyLink and are counted as one ILEC rather than four.

[6] Kan. Stat. Ann. 66-2002

now provides support based only on carriers' costs, as needed. All carriers' intrastate access charges now mirror interstate levels. Kansans have contributed significant funds to support the KUSF. From March 1997 – February 2011 (14 years), Kansans have provided approximately $870 million to support universal service. This does not include the additional funding Kansans have provided to support Lifeline, telecommunications relay services, special needs customers' telecommunications equipment and Kan-Ed, a broadband program for schools, libraries and hospitals. The assessment rate currently is 6.18% and it has ranged as high as 9%.

In accepting the FCC's invitation and providing these comments, the KCC is guided by the policy goals set out in the Kansas Telecommunications Act (KTA) in K.S.A. 66-2001, which states:

> It is hereby declared to be the public policy of the state to:
> (a) Ensure that every Kansan will have access to a first class telecommunications infrastructure that provides excellent services at an affordable price;
> (b) ensure that consumers throughout the state realize the benefits of competition through increased services and improved telecommunications facilities and infrastructure at reduced rates;
> (c) promote consumer access to a full range of telecommunications services, including advanced telecommunications services that are comparable in urban and rural areas throughout the state;
> (d) advance the development of a statewide telecommunications infrastructure that is capable of supporting applications, such as public safety, telemedicine, services for persons with special needs, distance learning, public library services, access to internet providers and others; and
> (e) protect consumers of telecommunications services from fraudulent business practices and practices that are inconsistent with the public interest, convenience and necessity.

As part of the KTA's policy goal to ensure affordable rates, the KCC must further avoid placing an excessive burden on the KUSF. The KCC recognizes that these priorities are affected by the structure of, and rates for, intercarrier compensation. Protecting Kansas consumers and carriers from the effects of fraudulent business practices such as the forms of arbitrage identified in the NPRM will ensure that all carriers are paying their fair share for the network, that the burden on funding from the KUSF and the federal Universal Service Fund (USF) is lessened, and that carriers can take confidence that they are receiving all revenues they are due, and thus enable them to deploy additional advanced networks.

Kansas was an early adopter of a key mechanism to discourage arbitrage – reducing intrastate switched access rates to interstate levels to eliminate incentives to manipulate the interstate or intrastate jurisdictional status of a call. Effective March 1, 1997, and in keeping with the KTA mandate set out in K.S.A. 66-2005(c), the KCC required all ILECs to reduce their intrastate switched access rates to interstate levels.[7]

Kansas' rural ILECs are required to maintain parity with their interstate switched access rates on a biennial basis. Thus, for the rural ILECs, maintaining switched access parity is an on-going process.[8] In other proceedings before the KCC, AT&T and Century Link, the only two carriers electing price cap carrier status, have obtained parity with the interstate access charges established by the FCC in the CALLS proceeding.[9]

Given this background information, the KCC offers the following comments relative to the primary components of Section XV.

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[7] *In the Matter of a General Investigation into Competition Within the Telecommunications Industry in the State of Kansas*, Docket No. 190,492-U(94-GIMT-478-GIT), December 27,1996 Order and April 29, 1998 Order.

[8] The KTA requires the rural ILECs' intrastate switched access rates be adjusted to parity, through increases or reductions, in odd-numbered years. Price cap carriers were not required to maintain parity on a biennial basis. However, the KCC reduced price cap carriers' intrastate switched access rates to interstate levels through company-specific dockets and general investigations. Kan. Stat. Ann. 66-2005(c).

[9] *In the Matter of a General Investigation into the Reformation of Intrastate Access Charges,* Docket No. 01-GIMT-082-GIT, September 25, 2001 Order Approving Stipulation and Agreement and *In the Matter of the Petition of Sprint Communications Company, L.P.; Sprint Spectrum, L.P.; and Nextel West Corp. d/b/a Sprint, to Conduct a General Investigation into the Intrastate Access Charges of The United Telephone Company of Eastern Kansas, the United Telephone Company of South Central Kansas, and the United Telephone Company of Southeastern Kansas d/b/a Embarq,* Docket No. 08-GIMT-1023-GIT, March 10, 2010 Order.

Defining VoIP Traffic as Telecommunications Service

1. The KCC is mindful that federal and state regulations, including intercarrier compensation regulations, must not act to chill new and innovative technologies, such as interconnected VoIP. However, it is equally important that regulators not provide a competitive advantage to one group of carriers, in this case interconnected VoIP providers, or it will pick winners and losers in the telecommunications market. To place interconnected VoIP service on a level playing field with other carriers making use of the Public Switched Telecommunications Network (PSTN), the KCC asserts that the FCC can and should acknowledge and declare that interconnected VoIP providers are providers of telecommunications service and thereby immediately subject to the same intercarrier compensation rates applied to all other traffic that uses the PSTN. In Kansas, the rate for all calls (interstate and intrastate) will be at interstate rates because the KCC requires that intrastate access be adjusted periodically to equal interstate access rates, as previously noted.

2. The FCC recognizes that its failure to classify interconnected VoIP service as a telecommunications service has led to numerous billing disputes and litigation, which has resulted in a diversion of resources that could otherwise be more productively applied to broadband initiatives.[10] For 2010 alone, disputes related to the compensation of Kansas-only traffic amounted to more than $1.2 million.[11] However, this does not take into account the expenses incurred to monitor and identify VoIP traffic, or for collection action and litigation.

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[10] *NPRM,* ¶ 604.

[11] The KCC conducted a Roundtable on the 4th and 11th days of March, 2011, to discuss the NPRM and gather feedback from interested parties. In conjunction with the Roundtable and to gather information to provide meaningful data for the FCC's consideration, the KCC issued data requests to carriers. The data referred to here was compiled from confidential responses to KCC Data Request 1 provided by wireline and wireless designated eligible telecommunications carriers and other wireless providers operating in Kansas. (*Confidential DR Responses to KCC*).

Thus, it is imperative that the FCC act now to affirm that VoIP is a telecommunications service. Interconnected VoIP depends on the PSTN to originate or terminate a call and is both "telecommunications" and a "telecommunications service" as defined in the FTA, which means that providers are "telecommunications carriers" under the FTA.[12]

3. As is the case when a new telecommunications technology emerges, there was uncertainty regarding how interconnected VoIP service worked and how it should be recognized within the telecommunications regulatory scheme in order to avoid hampering technological advances and infrastructure investment. Yet, as the new technology evolves and gains market share, the regulatory treatment of the technology becomes extremely important. It is now clear beyond peradventure that interconnected VoIP is a telecommunications service. It is, after all, "Voice" provided over Internet Protocol, and a voice communication "call" is a call apart from whether it is originated or terminated through a broadband connection. The calling party originates the call, the call is transported along a call path, and it is then terminated to the called party; regardless of whether it is originated or terminated by a wireline, fixed or mobile wireless, or fixed or nomadic interconnected VoIP provider. To argue that a particular technology which is applied in originating, delivering or terminating a voice communication somehow changes the character or nature of the voice communication is to simply attempt to confuse the issue by obfuscation: the central fact is that an interconnected VoIP communication cannot occur without access to and use of the PSTN.

4. Furthermore, the term "interconnected VoIP" itself recognizes that a VoIP provider, notwithstanding the provider resorts of an IP-based technology, must of necessity interconnect with the PSTN in order to offer services, and must:

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[12] 47 U.S.C.§ 153(43), (44), (46).

> (1) enable real-time, two-way *voice* communications; (2) require a broadband connection from the user's location; (3) require Internet protocol-compatible customer premises equipment (CPE); and (4) permit users generally *to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.*[13]

5. The FCC has already confirmed that interconnected VoIP providers are regulated as telecommunications carriers for purposes related to *CALEA*,[14] E911 requirements,[15] and federal universal fund obligations.[16] The FCC has also extended its rules governing the discontinuance of services to customers in the same fashion it has for non-dominant circuit switched carriers and has classified interconnected VoIP providers as "carriers" for purposes of those rules: "for §§ 63.60 through 63.90, the term 'carrier,' when used to refer either to all telecommunications carriers or more specifically to non-dominant telecommunications carriers, shall include interconnected VoIP providers."[17]

6. Critically, the FCC classified interconnected VoIP as "telecommunications" under the FTA, which broadly defines "telecommunications" as:

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[13] 47 C.F.R. §9.3 (emphasis added).

[14] *In the Matter of Communications Assistance for Law Enforcement Act and Broadband Access and Services*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket No. 04-295, 20 FCC Rcd, 14989, 15010 par. 43 ("[W]e find that it is in the public interest to deem an interconnected VoIP service provider a telecommunications carrier for purposes for CALEA.") (2005).

[15] *E911 Requirements for IP-Enabled Service Providers*, First Report and Order, WC Docket No. 05-196, 20 FCC Rcd. 10245, 10246 par.1 "In this Order, we adopt rules requiring providers of interconnected voice over Internet Protocol (VoIP) service to supply enhanced 911 (E911) capabilities to their customers." (note omitted) (2005).

[16] *In the Matter of Universal Service Contribution Methodology*, WC 06-122, FCC Rcd. 7518, 7521 par. 5, "Section 254(d) of the 1996 Act mandates that '[e]very telecommunications carrier that provides interstate telecommunications services shall contribute, on a equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.'" (note omitted). 7536 par. 34 "We require providers of 'interconnected VoIP services,' as defined by the Commission, to contribute to the federal USF under the existing contribution methodology on an interim basis." (notes omitted).

[17] 47 C.F.R. §63.60(a).

> The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.[18]

7. In finding that VoIP is "telecommunications," the FCC properly rejected the technical arguments that the involvement of IP-processing in a call changes "the form … of the information as sent and received" as is reflected in its regulations.[19] In spite of the FCC's action, VoIP providers continue to raise this technical issue to support their position and avoid having their service treated like traditional voice service. The only issue remaining is whether VoIP calls are "telecommunications services" rather than just "telecommunications." This is an easy non-technical issue because "telecommunications services" are simply "telecommunications" offered to the mass market consuming public for a fee:

> Telecommunications services means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, *regardless of the facilities used*.[20] (emphasis added).

Unquestionably, VoIP providers market their calling services to the general public for a fee. The VoIP product - the ability to make and receive call on the PSTN - is what a consumer purchases; not an input for some other product. Hence, interconnected VoIP providers use "telecommunications" to provide a "telecommunications services." This means that interconnected VoIP providers are "telecommunications carriers" because, by definition, all providers of "telecommunications services," with certain very narrow inapplicable exceptions, are "telecommunications carriers:"

[18] 47 C.F.R. §153(48).

[19] 47 C.F.R. § 153(48).

[20] 47 C.F.R. §153(46).

> The term "telecommunications carrier" means any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in section 226 of this title). A telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as common carriage.[21]

8. Even if the FCC were to decline to definitively resolve whether interconnected VoIP providers offer "telecommunications services" under federal law or are "telecommunications carriers" under federal law, there is no reason to preempt state law which does treat interconnected VoIP providers like circuit-switched providers for purposes of determining the obligations of VoIP providers to pay for services rendered to them. For the reasons articulated by the FCC in the NPRM, there is no policy conflict between federal and state law on this issue, which means there is no basis for preemption of state law. Similar to the FTA, the KTA also broadly defines the term "telecommunications." The KTA defines telecommunications service as, "the provision of a service for the transmission of telephone messages, or two-way video or data messages."[22] Furthermore, the KCC has authority over:

> (a) … every corporation, company, individual, association of persons, their trustees, lessees or receivers, that now or hereafter may own, control, operate or manage, except for private use, any equipment, plant or generating machinery, or any part thereof, for the transmission of telephone messages or for the transmission of telegraph messages in or through any part of the state, …. *As used herein, the term "transmission of telephone messages" shall include the transmission by wire or other means of any voice, data, signals or facsimile communications, including all such communications now in existence or as may be developed in the future.*[23] (emphasis added).

[21] 47 C.F.R. §153(44).

[22] Kan. Stat. Ann. 66-1,187(o).

[23] Kan. Stat. Ann. 66-104.

9. Given this definition and based on the FCC's actions, Kansas requires interconnected VoIP providers to contribute to the KUSF[24] and to E911 funding obligations.[25]

[24] Kan. Stat. Ann. 66-2008(a) states:

The commission shall require every telecommunications carrier, telecommunications public utility and wireless telecommunications service provider that provides intrastate telecommunications services and, to the extent not prohibited by federal law, every provider of interconnected VoIP service, as defined by 47 C.F.R. 9.3 (October 1, 2005), to contribute to the KUSF on an equitable and nondiscriminatory basis. Any telecommunications carrier, telecommunications public utility, wireless telecommunications service provider or provider of interconnected VoIP service which contributes to the KUSF may collect from customers an amount equal to such carrier's, utility's or provider's contribution, but such carrier, provider or utility may collect a lesser amount from its customer.

Any contributions in excess of distributions collected in any reporting year shall be applied to reduce the estimated contribution that would otherwise be necessary for the following year.

[25] Kan. Stat. Ann. 12-5357 states:

(a) Every billed VoIP service user shall be liable for the VoIP enhanced 911 grant fee and the VoIP enhanced 911 local fee until such fees have been paid to the VoIP provider.

(b) The duty to collect any such fees imposed pursuant to this act shall commence July 1, 2006. Such fees shall be added to and may be stated separately in billings. If stated separately, the fees shall be labeled "KS E-911 fees."

(c) The VoIP provider shall have no obligation to take any legal action to enforce the collection of the fees imposed by this act. The VoIP provider shall provide annually to the secretary a list of amounts of uncollected VoIP enhanced 911 grant fees along with the names and addresses of those VoIP service users which carry a balance that can be determined by the VoIP provider to be nonpayment of such fees. The VoIP provider shall provide annually to the local collection point administrator a list of amounts of uncollected VoIP enhanced 911 local fees along with the names and addresses of those VoIP service users which carry a balance that can be determined by the VoIP provider to be nonpayment of such fees.

(d) The fees imposed by this act shall be collected insofar as practicable at the same time as, and along with, the charges for VoIP service in accordance with regular billing practice of the VoIP provider.

(e) The VoIP enhanced 911 grant fee and the amounts required to be collected therefor are due monthly. The amount of any such fees collected in one month by the VoIP provider shall be remitted to the secretary not more than 15 days after the close of the calendar month. On or before the 15th day of each calendar month following, a return for the preceding month shall be filed with the secretary in such form as the secretary and the VoIP provider shall agree. The VoIP provider required to file the return shall deliver the return together with a remittance of the amount of the fees payable to the secretary. The VoIP provider shall maintain records of the amount of any such fees collected pursuant to action in accord with this act. Such records shall be maintained for a period of three years from the time the fees are collected.

(f) The VoIP enhanced 911 local fee and the amounts required to be collected therefor are due monthly. The amount of any such fees collected in one month by the VoIP provider shall be remitted to the local collection point administrator not more than 15 days after the close of the calendar month. On or before the 15th day of each calendar month following, a return for the preceding month shall be filed with the local collection point administrator. Such return shall be in such form and shall contain such information as required by the administrator. The VoIP provider required to file the return shall deliver the return together with a remittance of the amount of the fees payable to the local collection point administrator. The VoIP provider shall maintain records of the amount of any such fees collected pursuant to action in accord with this act. Such records shall be maintained for a period of three years from the time the fees are collected.

(g) Except as provided by subsection (d) of K.S.A. 2010 Supp. 12-5356, and amendments thereto, not later than 30 days after receipt of moneys from VoIP providers pursuant to this section, the local collection point administrator shall distribute such moneys collected from the VoIP enhanced 911 local fee to PSAP's based upon primary residence information provided by VoIP providers. The local collection point administrator may retain an administrative fee of not more than 2% of moneys collected from such fee.

The FCC recently reaffirmed states' authority to impose state USF obligations to nomadic interconnected VoIP providers.[26] The KCC has not sought to regulate market entry of interconnected VoIP providers or the rates charged to customers by interconnected VoIP providers. What is at issue here is whether interconnected VoIP providers should have an unfair competitive advantage of avoiding charges their competitors must pay. They should not.

10. The KCC treats interconnected VoIP traffic like any other telecommunications traffic that originates or terminates on the PSTN for intercarrier compensation purposes, as do many interconnected VoIP providers doing business in Kansas. The state's two largest carriers, CenturyLink and AT&T, have entered into interconnection agreements that require interconnected VoIP traffic to be subject to intercarrier reciprocal compensation and access charges in the same manner as for any other telecommunications traffic. In prior arbitration proceedings before the KCC, both the CLEC Coalition arbitration[27] and the Telcove arbitration,[28] resulted in the KCC applying intercarrier compensation obligations to IP-PSTN traffic. Neither orders were appealed. In addition, in October 2006, CenturyLink filed an interconnection agreement with WorldNet, LLC, a provider of telecommunications service over cable facilities,

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(h) The local collection point administrator shall keep accurate accounts of all receipts and disbursements of moneys from the VoIP enhanced 911 local fee. The receipts and disbursements shall be audited yearly by a licensed municipal accountant or certified public accountant and the audit report shall be submitted to the secretary.

[26] Declaratory Ruling, *In the Matter of Universal Service Contribution Methodology,* Petition of the Nebraska Public Service Commission and Kansas Corporation Commission for a Declaratory Ruling, on, or in the Alternative, Adoption of a Rule, Declaring that State Universal Service Funds may Assess Nomadic VoIP Intrastate Revenues, WC Docket 06-122, FCC 10-85 (rel. Nov. 5, 2010).

[27] *In the Matter of the Petition of CLEC Coalition for Arbitration Against Southwestern Bell Telephone, d/b/a SBC Kansas under Section 252(b)(1) of the Telecommunications Act of 1996,* Docket No. 05-BTKT-365-ARB, (CLEC Coalition Arbitration) Order 16: Commission Order on Phase II, Intercarrier Compensation, Subloop, and 911 Issues, p. 16, par. 33 (2005).

[28] *See, e.g., In the Matter of Arbitration between Telcove Investment, LLC against Southwestern Telephone Company d/b/a SBC Kansas Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996, and Applicable State Laws for Rates, Terms, and Conditions of Interconnection*, Docket No. 05-ABIT-507-ARB, (Telcove Arbitration) Order 11: Commission Order on Arbitrators' Award, p. 18 par. 58 (2005).

which the KCC approved in December 2006. This KCC-approved agreement, which has not been modified to date and remains in effect, contains the following language in Section 56.5:[29]

> Voice calls that are transmitted, in whole or in part, via the public Internet or a private IP network (VoIP) shall be compensated in the same manner as voice traffic (e.g. reciprocal compensation, interstate access and intrastate access).

Most recently, in January 2011, the KCC approved an interconnection agreement between CenturyLink and Navigator Telecommunications, Inc.[30] Section 56.5 of their agreement contains language similar to that in the WorldNet agreement:

> All voice calls exchanged between the Parties originating from or terminating to the PSTN shall be compensated in the same manner *(e.g.:* reciprocal compensation, interstate access, and intrastate access) regardless of the technology used to originate, terminate, or transport the call, including voice calls that are transmitted in part via the public Internet or a private IP network (VoIP) that originate from or terminate to the PSTN.

Thus, it is clear that companies engaging in providing VoIP services, at least in Kansas, recognize they are dealing with telecommunication services, and as such are subject to all currently standard intercarrier obligations.[31]

11. The KCC concludes that interconnected VoIP service is a telecommunications service and must be classified as such by the FCC. Reciprocal compensation and access charges

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[29] *In the Matter of an Application for Approval of an Interconnection Agreement Between United Telephone Company of Kansas d/b/a Embarq, United Telephone Company of Eastern Kansas d/b/a Embarq, United Telephone Company of South Central Kansas d/b/a Embarq, and United Telephone Company of Southeastern Kansas d/b/a Embarq and WorldNet, L.L.C., Pursuant to the Telecommunications Act of 1996,* Docket No. 07-UTDT-375-IAT, January 20, 2006 Order Approving Application (WorldNet).

[30] *In the Matter of an Application for Approval of an Interconnection, Collocation, and Resale Agreement Between Navigator Telecommunications, L.L.C. and United Telephone Company of Kansas d/b/a CenturyLink, United Telephone Company of Eastern Kansas d/b/a CenturyLink, United Telephone Company of South Central Kansas d/b/a CenturyLink, and United Telephone Company of Southeastern Kansas d/b/a CenturyLink, Pursuant to the Telecommunications Act of 1996,* Docket No. 11-UTDT-322-IAT, January 6, 2011 Order Approving Interconnection Agreement (Navigator).

[31] The language in the CenturyLink agreements is quite similar to the language in dispute in: Central Telephone of Virginia, et.al., v. Sprint Communications Co. of Virginia, et.al., In the United States District Court for the Eastern District of Virginia, Civil Case No. 3: 09 CV 720 (March 2, 2011).

should apply to IP-PSTN traffic; otherwise, interconnected VoIP providers will be given an inequitable competitive advantage over other market players. Failure to classify VoIP as telecommunications will only serve to encourage carriers to seek out and engage in those arbitrage opportunities which the FCC has indicated it seeks to discourage.

Immediate Obligation to Pay Existing Intercarrier Compensation Rates

12. Intercarrier compensation reform should not penalize states, providers, or consumers in states that have already undertaken steps to implement intrastate reforms. Telecommunications providers use a variety of technologies to offer services; however, they should pay the same intercarrier compensation rates for the same traffic categories, regardless of the technology utilized, in order to avoid penalizing or rewarding any type of carrier. As the FCC addresses intercarrier compensation, interconnected VoIP providers should be immediately required to follow the intercarrier compensation regulations that are in place today. As additional reforms are implemented, all carriers should be subject to the same transition glide path for the same categories of traffic. If interconnected VoIP providers are allowed to follow a different transition glide path, such carriers will receive a competitive advantage, conferred through regulation, over all other carriers. By applying the same intercarrier compensation rules equitably, all providers will bear an equitable portion of the cost of the PSTN. This approach promotes the maintenance of the existing network and the transition from a circuit-switched to IP-based network by providing regulatory certainty to the marketplace.

13. In Kansas, where intrastate access rates are already at interstate levels, immediately applying the same access rates to VoIP traffic as those applied to circuit-switched voice traffic will result in VoIP providers paying access charges on intrastate calls at the same

rates as interstate calls. Thus, there is no risk of additional access-charge-related arbitrage and no reason to give VoIP providers an extended opportunity to avoid paying the same charges that their competitors pay today or for traditional and current providers of PSTN voice communication services to switch to VoIP technology simply to avoid the traditional compensation regime. Immediate application of existing intercarrier compensation requirements on interconnected VoIP providers will add regulatory certainty for all carriers.

14. The KCC does not support a unique compensation rate for VoIP traffic. While some carriers urge this approach, a unique VoIP compensation rate would add to the resources necessary to address this issue (identify, classify and invoice for VoIP traffic) and further frustrate the goal of eliminating arbitrage. The FCC and industry would be required to expend vast resources to determine the appropriate intercarrier compensation rate when such resources could be better spent on broadband deployment. Additionally, carriers do not currently distinguish between VoIP and non-VoIP terminating traffic. Should the FCC adopt a new VoIP compensation rate, carriers will need to make such a distinction and may need to modify, or even create, billing systems to make that distinction. The best approach is not to create a unique rate, and not to unnecessarily expend time resources of the FCC, the KCC, or carriers in straining at contorted rationales for the classification of a service as something other than what everyone else recognizes it to be, but rather to treat interconnected VoIP traffic the same as all other traffic and eliminate the competitive advantage interconnected VoIP providers enjoy today. It appears from comments provided to the KCC that Kansas carriers tend to agree that similar traffic should be subject to similar compensation, even though they may not yet agree on what is the appropriate rate (e.g. interstate or intrastate switched access, reciprocal compensation, etc.).[32]

[32] *Confidential DR responses to the KCC.*

15. Again, the KCC supports the application of the existing compensation regime to interconnected VoIP traffic. The FCC previously stated:

> As a policy matter, we believe that any service provider that sends traffic to the PSTN should be subject to similar compensation obligations, irrespective of whether the traffic originates on the PSTN, on an IP network, or on a cable network. We maintain that the cost of the PSTN should be borne equitably among those that use it in similar ways.[33]

16. The KCC whole-heartedly agrees with that statement and believes it is even more relevant today than it was in 2004. Left unchecked, the uncertainty that carriers have experienced (and will continue to experience) concerning what amount of compensation they may receive is likely to grow exponentially as VoIP subscribership grows. Interconnected VoIP subscribership grew by five million between June 2009 and June 2010.[34] As of June 2010, there were 29 million interconnected VoIP subscribers in the United States.[35] This continued increase in VoIP subscribership underscores the importance of regulatory action now. Immediate FCC action regarding the appropriate classification of VoIP services will reduce waste and inefficiencies within the telecommunications industry, and of equal significance, will reduce the cost of telecommunications services to consumers.

Rules to Address Phantom Traffic

17. As the FCC is aware, arbitrage does not focus solely on how to route traffic to the terminating jurisdiction with the lowest access rate. Unfortunately, it appears that carriers continually look for loopholes to avoid paying any charges, or any available means to secure the

[33] *In the Matter of IP-Enabled Services*, WC Docket No. 04-36, 19 FCC Rcd. 4864, 4885, para. 33, 4909 para. 61 (2004).

[34] Local Telephone Competition: Status as of June 30. 2010, Industry Analysis and Technology Division Wireline Competition Bureau, p. 2 (March 2011).

[35] Id, p. 1.

lowest cost, even if improper, obligation possible. An incentive exists for providers to disguise their traffic as local traffic or as another provider's traffic. This problem is compounded by carriers excluding, altering, or even stripping pertinent identifying call information from the call record.

18. The FCC proposes to modify its rules in order to ensure that terminating service providers will receive all call information needed to identify the originating provider, without imposing burdensome costs. Specifically, the FCC proposes that all originating service providers, and all providers along the call path, be required to include the calling party's telephone number (CPN) in the call record information. This requirement would be extended to include the charge number (CN) if different than the CPN. The FCC proposes to prohibit any carrier from altering or stripping CPN or CN information from any type of call. The KCC supports these proposals and believes they will benefit carriers and consumers alike by ensuring that carriers receive appropriate compensation for use of the PTSN.

19. Many of the thirty-seven rural ILECs in Kansas currently rely on other providers – mainly AT&T – for tandem transit service. Without a direct connection to the originating provider, these carriers, of necessity, rely on the transiting service provider for call information. A transiting provider can only pass along call information it has received from the originating provider or other providers in the call path. The lack of complete and accurate call information results in many ILECs in Kansas not being able to identify, on average, three to five percent of their terminating traffic. Phantom traffic not only affects the ILECs but other providers as well, and it is likely that carriers were unpaid by at least $1 million to terminate traffic in Kansas in 2010.[36] This is only an estimate as the very nature of phantom traffic makes it hard to quantify

[36] *Confidential DR responses to the KCC.*

the revenue impact to companies. However, lost revenues are not the only costs, as carriers expend significant resources attempting to identify all traffic in order to properly bill originating carriers.

20. The FCC must take action, both through rulemaking and enforcement, to ensure that the call detail information provided is complete and accurate. While industry standards will evolve as technology changes, the requirements to provide call information must apply to all originating and transiting providers, as well as all transit providers.

Rules to Reduce Access Stimulation

21. Access stimulation diverts millions of dollars a year away from other uses, such as broadband deployment, infrastructure maintenance and upgrades, new electronics, etc., resulting in harm to competition and consumers.[37] The KCC supports the FCC's proposals to modify its rules in order to minimize access stimulation. We realize that carriers will continue to engage in these activities so long as some perceive it is profitable to do so. To make this unproductive activity less attractive, the FCC should not differentiate between "access stimulation" and "traffic pumping;" nor should there be allowed to remain any construction of FCC regulations or orders which may be claimed to support "access stimulation" as a legitimate business practice. The KCC supports the adoption of a trigger mechanism, provided that the trigger is set at a level that avoids capturing legitimate business activities. Modifying tariff regulations and prohibiting carriers from including expenses directly attributable to access stimulation activities in their revenue requirement will also serve to reduce access stimulation activities.

[37] *NPRM,* ¶ 637.

22. Carriers operating in Kansas have not reported access stimulation or traffic pumping activities occurring within the state for some time. Carriers in Kansas cite to our actions to reduce intrastate switched access rates to interstate levels as helping to curb access stimulation behaviors. However, wireless providers and interexchange carriers (IXCs) continue to be subject to access stimulation since they operate in multiple jurisdictions. When those providers are subject to access stimulation activities in another jurisdiction, Kansas consumers are harmed because the carrier's average rate is higher in order to recover costs related to access stimulation activities. Therefore, we encourage the FCC to adopt rules and enforcement mechanisms to address this practice.

23. To ensure all carriers play by the same rules and that waste and inefficiencies within the telecommunications industry are minimized, the FCC must adopt enforcement mechanisms that provide an incentive for carriers to comply with the FCC's rules and discourage the activity that led to the need for the rules in the first place. A fine or penalty should be available for assessment against any carrier that is not complying with the rules. The fine or penalty must be sufficient enough to act as a deterrent and must be implemented in a timely manner. Further, the enforcement mechanism should provide that the penalty is applicable on a per-occurrence basis and/or for an escalation of penalties for a carrier which has previously been found in non-compliance with a rule. The FCC should also consider requiring a non-compliant carrier to compensate the injured carrier. For example, a carrier engaged in access stimulation should be fined and required to refund the ill-gotten revenues to the carrier that paid the additional access revenue. Only through enforcement of its rules can the FCC increase compliance with those regulations, curb the activities, and restore confidence in the regulatory regime. Given the resources available to the FCC, and its current focus, as well as in recognition

of the long standing federal-state partnership/collaboration, authority for enforcement of these obligations should be extended to the state commissions.

24. It is important that the FCC avoid inadvertently encouraging access stimulation by implying that a carrier's technical compliance with the FCC's new proposed anti-stimulation rules means the carrier's activities are lawful. Those carriers who would engage in arbitrage are shrewd and will think of new schemes that technically comply with whatever rules the FCC adopts, but that are nonetheless unjust and unreasonable and in violation of Section 201(b) of the FTA. Rather than attempting to anticipate what such carriers might do, the FCC, in its order adopting rules should simply confirm that compliance with the access stimulation rules does not create any presumption that those activities that providers engage in are just and reasonable under Section 201(b) of the FTA and equivalent state law provisions. Additionally, the FCC should require that the burden shall be on the provider of those services resulting in access stimulation to demonstrate that such activities or services are just, reasonable and legitimate business practices. The determination of whether a particular scheme is unjust or unreasonable arbitrage or a legitimate business practice must be reviewed on a case-by-case basis, performed by a FCC Bureau, court, or state public utility commission that is deciding a specific dispute and has authority to review the particular facts involved.

These Comments of the Corporation Commission of the State of Kansas are made and respectfully submitted this 1st day of April, 2011.

Thomas E. Wright, Chairman

Ward Loyd, Commissioner